

HONG KONG / JUDGMENT

HKSAR v. SHI MINGYI

COURT

Court of First Instance

DECIDED

13 November 2007

CASE / FILE NUMBER

HCMA896/2007

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Before: Hon Beeson J in Court Date of Hearing: 13 November 2007 Date of Judgment: 13 November 2007 Date of Reasons for Judgment: 20 November 2007

J U D G M E N T

On 13 November 2007, the Appellant appealed against a total sentence of two years imprisonment imposed on her for 5 charges to which she had pleaded guilty in the Magistracy before Mr T S Jenkins. The charges were: Charge 1. Remaining in Hong Kong without the authority of the Director of Immigration after having landed unlawfully in Hong Kong, contrary to section 38(1) (b) of the Immigration Ordinance, Cap. 115; Charge 2. Possession of a forged identity card, contrary to section 7(A)(1) of the Registration of Persons Ordinance, Cap. 177; Charge 3. Using a forged identity card, contrary to section 7 (A)(1) of the Registration of Persons Ordinance, Cap. 177; Charge 4. Breach of condition of stay, contrary to section of the Immigration Ordinance, Cap. 115 and by virtue of Regulation 2 of the Immigration Regulations; and Charge 5. Using a forged identity card, contrary to section 7(A)(1) of the Registration of Persons Ordinance, Cap. 177. On each of Charges 1, 2, 3 and 5 the appellant was sentenced to 15 months imprisonment. On charge 4 she was sentenced to 4 months imprisonment. The sentences on charges 1, 2 and 3 were ordered to run concurrently. The sentences on charges 4 and 5 were ordered to run concurrently. 9 months of the sentence on charges 4 and 5 were ordered to run consecutively to the period of imprisonment imposed on charges 1, 2 and 3. The total sentence was 2 years imprisonment. I dismissed the appeal and advised I would give reasons at a later date. These are my reasons. Facts of the Case The Appellant was intercepted at a restaurant in Wan Chai by immigration officers who were making enquiries to verify a Hong Kong Identity Card. The Appellant produced an identity card in the name of SEE Ming-yee for checking. She admitted later that the card was forged and that she had purchased it from a middleman in Shenzhen. She sneaked into Hong

Kong unlawfully around May 2007. A Chinese permit in the name of SHI Mingyi bearing a date of birth 23 November 1973, was found at her residence. Under caution the Appellant admitted that this permit bore her true identity. She had paid \$250 for the Hong Kong Identity Card in the mainland. She arrived in Hong Kong using her Chinese permit on 22 February 2006 and was admitted to remain as a visitor for 14 days. That visa prohibited her from taking up paid or unpaid employment. She attended a job interview on 27 December 2006 using the purchased identity card and was employed as an odd-job worker. She worked for two months (Charge 4) but was arrested for overstaying and repatriated in March 2007. At that time she claimed that the identity card had been thrown away by her friend. In April 2007 the Appellant bought another identity card at a cost of \$350. She feared that she would not be allowed to come to Hong Kong because of her previous record, so she sneaked into Hong Kong by truck in May/June 2007. Having landed unlawfully, she remained in Hong Kong until intercepted by immigration officers in August 2007 (Charge 1) She attended a job interview at the same restaurant in June 2007 and was employed as an odd-job worker (Charge 3). She worked there until her arrest (Charge 2). A check of Immigration records revealed that the numbers for each of the ID cards were invalid and that no records existed for those cards. In mitigation the Magistrate was told that the Appellant was the sole breadwinner for her family in China and she had come to Hong Kong to earn money for the school fees of her two children. She confirmed to this court that those children, aged 13 years and 8 years, were living with her mother-in-law who was aged around 70 years old and with their father, her husband. She claimed however that her husband did not care about the family and did not contribute to its maintenance. The Appellant had one conviction for Breach of Condition of Stay, contrary to section 41 of the Immigration Ordinance, Cap. 115. She had been sentenced to 28 days imprisonment, suspended for 18 months. The sole ground of appeal was the Appellant's submission that the sentence was too severe. She admitted that she knew what she had done was wrong, but asked the court for leniency because she had to look after her children. When sentencing the Magistrate took into account the principles of sentencing for offences such as the present ones, as set out and discussed in HKSAR v Li Chang-Li HCMA 935/2004. He followed those principles when assessing the sentence for each of these charges. After considering totality he ordered that the sentences on charges 4 and 5 be partly concurrent with the sentences for charges 1, 2 and 3. He refrained from activating the suspended sentence imposed on 23 January 2006 stating that the overstaying related to the same period of time as in charges 4 and 5. That was true, but charges 1, 2, and 3 had been committed within the period of suspension and the sentence could have been activated for those convictions. As it appears that the Magistrate wished to exercise leniency on this aspect, I respect his view and do not propose to activate that sentence in whole or in part. The Appellant knew what she was doing was wrong. She had been dealt with leniently by the court on the first occasion that she overstayed. Thereafter she made another visit to Hong Kong within a short space of time. On each occasion she had prepared herself by buying a false identity card with which she obtained work. The sentences imposed by the Magistrate were not excessive, nor were they wrong in principle. Accordingly I dismissed the appeal. (C-M Beeson) Judge of the Court of First Instance Ms Sally Yam, SGC, Department of Justice, for the Respondent The Appellant, acting in person, present PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B 1udk 1udk fUU : HCMA.dot setup

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